

Statement of Rep. Tom Davis
Ranking Republican
Committee on Oversight and Government Reform
Hearing: *White House Procedures for Safeguarding Classified Information*
March 16, 2007

I want to begin by commending Chairman Waxman on the passage of important reform legislation this week. The House adopted bipartisan bills crafted in this Committee to strengthen the Freedom of Information Act, disclose donors to presidential libraries, expand access to presidential records and fortify whistleblower protections. Given those accomplishments, it seems sadly ironic we end Sunshine Week - the annual observance of open government – with a partisan hearing on how best to keep secrets.

I have to confess, I'm not sure what we're trying to accomplish here given all the limitations the Chairman just described. Ostensibly called to examine White House procedures for handling and protecting classified information, this hearing's lead witness never worked at the White House. If Valerie Plame Wilson knows about security practices there, she certainly can't say much, if anything, about them in a public forum. But we do know she worked at the Central Intelligence Agency. That now well known fact raises some very different questions about how critical, but difficult, it is to protect the identity of individuals with covert status. But again, those are questions we probably can't say much about here without violating the very security safeguards the majority claims to be worried about at the White House.

Under these circumstances, perhaps a hypothetical case is the best way to describe the futility of trying to enforce the Intelligence Identity Protection Act in this decidedly non-judicial venue. Let's say a member of the committee staff is told to identify a CIA witness for a hearing on security practices. He, or she, calls the Agency and asks to speak with Official A. Official A is not in, so the call is routed to Official B, who identifies him or herself by name and title, and answers the staffer's questions. Thinking Official B would be a fine witness, the staff member then calls the Congressional Research Service, or a friend at another committee, to find out more about Official B. But Official B happens to be a covert agent.

In passing the name, title and CIA affiliation around, has the staff member violated the law against disclosure? Probably not. You'd have to be looking through a pretty thick political prism to see an intentional unauthorized disclosure in that context.

In the case of Mrs. Wilson, the majority stresses the fact that disclosure of her status triggered a "crimes report" by the CIA to the Justice Department. Allegations against White House officials and reporters were thoroughly vetted. But after spending six months and millions of dollars, the Special Counsel charged *no one* with a violation of the Intelligence Identities Protection Act. The lack of prosecutions under the Act shows those disclosures probably occurred in a similarly non-intentional context, lacking the requisite knowledge of covert status or the intention to disclose that status without authorization. No process can be adopted to protect classified information that no one knows is classified. Just as no one can be prosecuted for unauthorized disclosure of information that no one ever said was protected.

So this looks much more like a CIA problem than a White House problem. If the Agency doesn't take sufficient precautions to protect the identity of those engaged in covert work, no one else can do it for them. The same law meant to protect secret identities also requires an annual report to Congress on the steps taken to protect that highly sensitive information. We're told few, if any, such reports exist. Who knows what information needs to be protected and how are they told? Is there a list officials can check against? Do CIA briefers know when material given to executive branch officials references a covert agent, and are they cautioned not to repeat the name? How is it made known, and to whom, when the five year protection period for a formerly covert agent has elapsed? Those are the questions that need to be asked about the safeguards on classified information. But we won't hear from the CIA today in this open forum.

Given all that, I suspect we're going to waste considerable time today talking about all the things we can't talk about. It's unfortunate. Unfortunate an individual possibly still in a covert status was publicly identified. Unfortunate executive branch officials got anywhere near this media maelstrom rather than focus on more serious problems. And unfortunate this has become so politicized. On this side, we're not here to defend or attack anyone. In an open session, we hope to shed some sunshine on the workings of government. I have to say again, I'm not sure that's going to happen today, but I thank our witnesses for trying.